



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE	<u>01/09/01</u>
AGENDA ITEM	<u>6</u>
WORK SESSION ITEM	<u> </u>

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Denial of Use Permit No. 00-160-09 – Jun & Shirley Sarmiento for 3 Diamond Autobody & Paint (Applicant), Douglas Day for AECO Management (Owner) – Request to Establish Minor and Major Auto Repair Services within an Existing 8,650-Square-Foot Commercial Building – The Property Is Located at 701 “A” Street in a CC-C (Central City – Commercial) District

RECOMMENDATION:

It is recommended that the City Council deny the appeal and uphold the Planning Commission action subject to the attached findings.

DISCUSSION:

The applicant proposes to operate an auto repair facility, featuring both minor and major services, within an existing building at 701 “A” Street, the southeast corner with Montgomery Street. The minor auto repair services include engine tune-up, repair and overhaul and computer diagnostics. The major repair services would include collision repair and painting. Auto repair facilities require approval of a Conditional Use Permit in *the Central City – Commercial District*.

The Planning Commission, at its meeting of November 16, 2000, denied the conditional use permit by a 5-1 vote. The Commission stated that auto service use is not appropriate at this location pursuant to the adopted findings, and expressed concern that this request is an expansion of the original use permit. The dissenting vote favored the continued use of auto repair services in this building originally designed for such use.

Background

A conditional use permit was issued in 1963 to construct the building for use as a general automotive garage, including retail and wholesale sales of auto parts and engines. The approval was at the time the property was zoned General Commercial and before adoption of the Downtown Design Plan and subsequent rezoning to Central City – Commercial. Expressly excluded from the use permit were bodywork and painting, lubrication and wheel alignment. The current applicant is an intensification of the previous use as it includes bodywork and painting.

Operations within the building ceased as of September 1997, and the building was vacant for approximately two years. A building permit application for seismic upgrade was made in December 1998. The owner was notified on January 26, 1999, that the permit was ready to issue, it was issued in April 1999, and the work on the retrofit was completed July 1999. The upgrade more securely tied the roof to the building walls. The building permit for the seismic upgrade addressed only the structural components of the application and did not provide a guarantee or include any implication relative to future use of the building. When a business requiring a conditional use permit has ceased operation for a period in excess of six consecutive months, the use permit becomes null and void.

The applicant began operating an auto repair facility in June 1999, without an approved use permit, at which time a paint spray booth was installed. Staff ordered the removal of the booth and a cessation of welding operations. The applicant has continued the auto repair services in the meantime.

Site

The surrounding zone district is *Central City – Commercial* (CC-C) and the general plan land use designation is *Retail & Office Commercial* (ROC). The property is located within the Downtown Hayward Redevelopment Plan Area. The area around the proposed auto repair facility contains a mixture of uses including restaurants, high-density residential (including senior housing), minor auto repair, offices and service commercial. The future use of the vacant property to the west, owned by BART, is unknown; however, it may be anticipated that it will be developed with a mixture of transit-oriented uses as is being done currently within Hayward's Downtown Core and within other communities with BART stations.

General Plan Issues

The property is located in the Downtown, which stands apart from other areas of the City "because it has the widest mixture of land uses and because it is the symbolic center for the City. ... Mixed-use development is to be preferred wherever feasible because retail use at ground levels with office or residential above would put complementary uses within walking distance creating an intensely used, interesting, pedestrian district."¹ The property is also located less than 700 feet from the Hayward BART Station, placing it within this pedestrian district.

Staff believes that auto repair services do not conform to the General Plan designation. The proposed uses are typically located in the *Industrial* or *General Commercial* areas of the City. The General Policies Plan envisions that existing auto repair establishments near the Hayward BART station will be relocated to those areas. The repair services add an intensity of use that is not desirable in the downtown core and will disrupt the pedestrian character and the mix of uses of the downtown. Major auto repair services typically require longer repair times and storage of the vehicles, and introduce hazardous materials and odors.

¹ General Policies Plan, Economic Development Element

The site contains no on-site parking except for that which can be accommodated within the building. Although the proposed site plan indicates that 18 cars can be parked inside the building, it is more likely that only 9 cars could be parked in an orderly fashion given the location of the equipment and the lane needed for vehicle movement through the building. Should the business be successful, the combination of minor and major repair services will require cars, which may be in a damaged state, to be parked on the adjacent streets or on an off-site location. Off-site parking will further impact the desired development of the downtown. The current operation already requires that cars be densely packed into the building.

The *Core Area Plan* calls for paying attention to the “boundaries and gateways along the perimeter of the core to give identity and clarity to the area.” “To create physical definition for the downtown core, density and activity must continue all the way to its perimeter. A strong boundary will help **define** the identity of the core as a distinct area, and gateways along this boundary identify **the** revitalized center for the thousands of people who travel on the surrounding arterials daily.” The infusion of new auto repair uses along “A” Street will accentuate the existing automobile-oriented perimeter. The proposed use will contribute to the fragmentation of the perimeter of the downtown core and will be harmful to the downtown.

Public Comments

The building owner, the applicant, the applicant’s representatives, and one additional person spoke in favor of the project during the Planning Commission hearing; there was no opposition. The applicant spoke of the difficulty of finding affordable locations for small businesses in the Bay Area. The applicant also indicated that City staff told her that the property is zoned for commercial activity and that the business was relocated on that basis. Although City staff members queried had no recollection of a conversation about the zoning on subject parcel, a question to a staff member relative to the zoning would have resulted the response that the property is zoned commercial. Nonetheless, an inference should not be drawn that *any* commercial activity is acceptable. The applicant’s representative indicated to the Planning Commission that reinstatement of the original use permit would be insufficient since the unauthorized major repair activities are necessary for success of the business.

Appeal

The appellant claims in his letter of November 20, 2000 (see Exhibit C) that

- . the proposal is consistent with the General Plan and Zoning Ordinance,
- that the auto body shop is compatible with adjacent uses,
- . that the seismic upgrading took over a year and the building was vacant because the Planning Department failed to review and approved the plans in a timely manner, in effect, keeping the use permit issued in 1963 active,
- . that the owner spent approximately \$250,000 in upgrades during the seismic upgrading, and
- . that a business license was issued to a sublessee for auto-related repair in August 1999.

The issues relating to General Plan, zoning, and compatibility are addressed above within this report and within the attached Planning Commission staff report, attached as Exhibit D. The findings of the Planning Commission included inconsistency of the proposed use with the General Plan, the Zoning Ordinance, and surrounding and anticipated development.

With regard to seismic upgrade, the property owner applied for a building permit for seismic upgrading in 1994, but did not follow through. He applied again in late 1998 and then in April 1999 when he changed contractors. Once the building permit was picked up, it appears the work took about four months. Being solely a structural undertaking, the building permit was not reviewed by the Planning Division. The valuation of the work, as determined by the contractor on the building permit application, was \$90,000.

“Agustin Auto Repair and Diagnostic” paid a “business tax” for auto repair at 701 A Street on August 26, 1999, although it is staffs understanding that the business has been operating there since June 1999. According to the planner who signed the business tax form (not a business “license”), he would have done so only if the representative of the business had indicated that they were taking the place of an auto repair business that recently (within the previous six months) vacated the premises. It was not until later that it came to staff’s attention that this was not the case.


Environmental Review

Projects that are denied do not require CEQA review. Should the City Council wish to reinstate the previous use permit without change; no further review will be necessary. However, should the Council consider reinstatement of the previous permit with expanded uses or approval of a new permit, staff will have to prepare an initial study to determine whether a Negative Declaration or an Environmental Impact Report (EIR); completion of the environmental review will be required prior to approval.

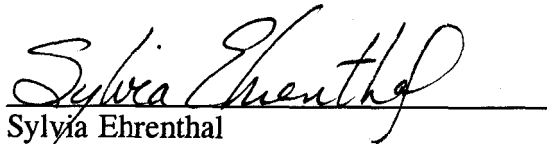
CONCLUSION:

The General Policies Plan envisions that auto repair facilities will be relocated out of the downtown as possible. Auto repair services are not compatible with the mix of uses desired in the downtown area, especially the transit-oriented ‘uses that are desired in the vicinity of the BART station. Higher-density commercial and residential development that is clustered within walking distance of transit centers has the potential to increase the use of transit, provide mobility for non-drivers, and reduce traffic congestion. There are a variety of uses, provided for in the Zoning Ordinance regulations for the CC-C District, which could be appropriate in the existing building. Therefore, it is recommended that the City Council deny the Use Permit for the proposed auto repair services.

Prepared by:


Richard E. Patenaude, AICP
Acting-Principal Planner

Recommended by:


Sylvia Ehrental
Director of Community and Economic Development

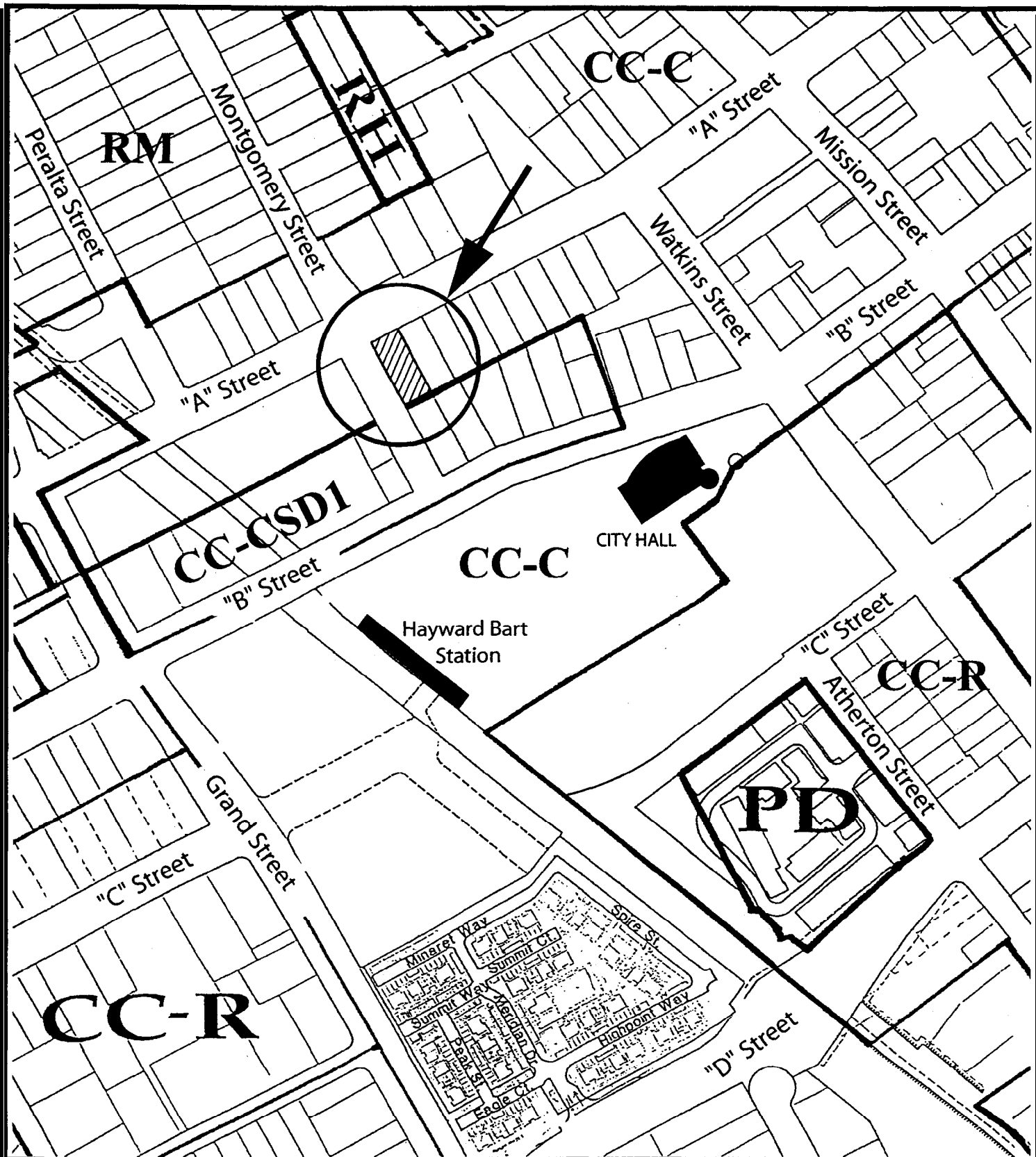
Approved by:


Jesús Armas, City Manager

Attachments:

- Exhibit A – Area/Zoning Map
- Exhibit B – Findings for Denial
- Exhibit C – Letter of Appeal
- Exhibit D – Draft Planning Commission Meeting Minutes and Staff Report dated
November 16, 2000
- Draft Resolution

EXHIBIT A



Area & Zoning Map

UP 00-1 60-09

Address: 701 A Street

Applicant: Jun & Shirly Sarmiento for 3 Diamond Auto Body & Paint

Owner: Douglas Day for AECO Management

**FINDINGS FOR DENIAL,
Use Permit Application 00-160-09
Jun & Shirley Sarmiento for 3 Diamond Autobody & Paint (Applicant)
Douglas Day for AECO Management (Owner)
701 A Street**

1. The proposed auto repair services are not desirable for the public convenience or welfare in that they are detrimental to the desired pedestrian- and transit-oriented uses envisioned for the downtown area, and in that there are suitable locations for the proposed use in the *General Commercial* and *Industrial* districts of the City;
2. The proposed auto repair service will impair the character and integrity of the Central City Commercial (CC-C) District as it is *not* a desirable service amid the existing and proposed mix of pedestrian- and transit-oriented uses desired for the downtown area and which otherwise may be located in the subject structure;
3. The proposed auto repair service will be detrimental to the public health, safety, or general welfare in that the proposed use introduces traffic and parking conflicts, and hazardous materials and odors, that are detrimental to the existing and proposed mix of pedestrian- and transit-oriented uses desired for the downtown area; and
4. The proposed auto repair service will not be in harmony with applicable City policies as the *General Policies Plan* envisions that auto repair services will be relocated out of the downtown area and that the *Core Area Plan* envisions “A” Street to be the boundary of a pedestrian district, which this type of use is likely to disrupt.

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November 20, 2000

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Planning Director
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777 "B" Street
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Re: Appeal of Planning Commission Denial of Use Permit Application
No.00-160-09 -- 3 Diamond Autobody & Paint

Dear Ms. Ehrental: . . .

Pursuant to Section 10-1.2845 of the City of Hayward ("City") Zoning Ordinance, on behalf of our clients, Mr. and Mrs. Jun Sarmiento, applicants for the Use Permit No.00-160-09 ("Use Permit"), we hereby appeal to the **City Council** the decision of the **City Planning Commission** to deny the Use Permit.

The specific grounds of our appeal are as follows. First, we believe staff's recommendation and the Planning Commission's decision were unsupported by the evidence in the administrative record for this Use Permit application. As described in the attached letter dated November 15, 2000 to the Planning Commission, contrary to the staff's assertions, the proposed Use Permit is consistent with the Hayward General Plan and the Hayward Zoning Ordinance. We request that the City Council consider the evidence contained in our letter prior to making its decision on the Use Permit.

Secondly, as we stated in our letter and indicated in testimony before the Planning Commission on November 16, 2000, the proposed auto body and paint shop is compatible with the adjacent land uses. The proposed use is similar to the other existing and recently approved auto repair businesses on A Street and Mission Boulevard. The proposed auto body and paint shop would be located within an existing building that we understand was constructed specifically for automotive repair uses. Denial of the Use Permit results in a vacant building adjacent to a vacant lot, across the street from other vacant buildings. This effect does not seem consistent with the General Plan.

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November 20, 2000
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We also believe that there is ambiguity in the City Zoning Ordinance regarding the lapse of the prior conditional use permit for 701 A Street (the "Prior Use Permit"). The staff report and staff presentation indicated that the Prior USC Permit was granted for automotive repair uses in 1963. According to staff, operations within the building ceased in September 1997. During part of that time, the building was undergoing seismic retrofitting. Staff informed the Planning Commission that the Prior Use Permit lapsed because the building was vacant for a period of 6 consecutive months. Mr. Douglas Day of AECO Management, the property owner, provided testimony to the Planning Commission indicating that the seismic retrofitting took longer than one year and the building remained vacant because the Planning Department failed to review and approve the plans in a timely manner. Once a building permit was issued for the seismic retrofitting, Mr. Day undertook the building upgrades.

It is true that Section 10-1.3270 of the Zoning Ordinance provides that all uses that cease operations for a period of more than 6 consecutive months are deemed discontinued and require a new use permit to operate. Nonetheless, Section 10-1.3255 provides that:

"If a building permit is issued for construction of improvements authorized by the conditional use permit approval, the conditional use permit approval shall be void two years after issuance of the building permit, or three years after approval of the conditional use permit application, whichever is later [emphasis added], unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the conditional use permit approval."

Staff did not provide this information in the staff report nor in testimony to the Planning Commission. A building permit was issued for seismic retrofitting of the existing building in September 1997. Mr. Day offered testimony to the Planning Commission indicating that AECO Management spent approximately \$250,000 in upgrades during that period. Under Section 10-1.3255, the Prior Use Permit remained in effect through September, 1999. On August 1, 1999, Mr. and Mrs. Sarmiento signed a lease with AECO Management to occupy the premises. Subsequently, Mr. Agustin Duran, who is subleasing a portion of the premises at 701 A Street from Mr. and Mrs. Sarmiento, obtained a business license from the City of Hayward to operate his auto repair business at the premises. Mr. Duran's Business Tax Form dated August 26, 1999, was stamped approved by the Planning Director, and the Planning Director never indicated that auto repair services (of any kind) could not operate at 701 A Street.

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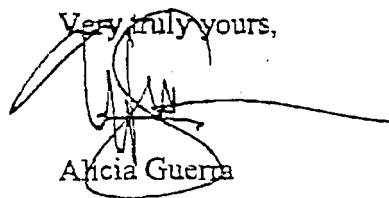
Ms. Sylvia Ehrenthal
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Based upon this information, the evidence presented to the Planning Commission and the relevant provisions of the Zoning Ordinance staff failed to relay to the Planning Commission, we believe that the Prior Use Permit may not have expired. Conditional use permits generally run with the land and subsequent owners succeed to any benefits or obligations, *Imperial County v. McDougal* (1977) 19 Cal.3d 505. We believe that there is a reasonable interpretation under the Zoning Ordinance that the Prior Use Permit remains in effect. Therefore, we request that the City confirm the status of the Prior Use Permit and present this information to the City Council as part of the appeals process for the new Use Permit.

Finally, we request that the City Council consider the appeal of this Use Permit because of the substantial hardship Mr. and Mrs. Sarmiento will face if they lose the ability to operate their business. Moreover, AECO Management has incurred substantial expenses in retrofitting the building in order to comply with City of Hayward requirements, only to find out now, after incurring such expenses, that automotive repair uses are no longer allowed at this location. As a matter of fairness to our clients and to the property owner, we therefore, request that the City Council consider this appeal.

We request that the Planning Department schedule the appeal of the Use Permit for the next regularly scheduled meeting of the City Council. If the Prior Use Permit remains valid, we request that the City Council allow Mr. and Mrs. Sarmiento and Mr. Duran (the sublessee) to continue to operate their businesses at 701 A Street under the operative Prior Use Permit. If it turns out that the Prior Use Permit is no longer in effect, or if a modification of the Prior Use Permit is required in order to authorize the proposed uses included in the proposed Use Permit, we request that the City Council consider the appeal of the Planning Commission's denial of the proposed Use Permit.

Very truly yours,



Alicia Guerra

cc: Angelina Reyes, City Clerk
Michael O'Toole, City Attorney
Richard Patenaude
Mr. and Mrs. Sarmiento
James Caleshu, Esq.
Hope Nakamura, Esq.
Mr. Douglas Day, AECO

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VIA FACSIMILE

Jerry Caveglia, Chair
Hayward Planning commission
777 "B" Street
Hayward, CA 94541

Re: UP 00-16-09; Sarmiento - 701 A Street

Dear Mr. Caveglia and Members of the Planning Commission:

Morrison & Foerster, LLP serves as land use counsel for Mr. and Mrs. Jun Sarmiento, owners of the 3 Diamond Autobody Shop located at 701 A Street, and applicants for the Use Permit Application, UP 00-16-09 ("Use Permit") under consideration by the City of Hayward ("City") Planning Commission on November 16, 2000. Morrison & Foerster, in conjunction with Legal Services for Entrepreneurs of the San Francisco Bay Area ("LSE"), are assisting Mr. and Mrs. Sarmiento in obtaining the necessary approvals to operate their auto body and painting shop in Hayward.

On behalf of Mr. and Mrs. Jun Sarmiento, We respectfully request that the Planning Commission approve the proposed Use Permit and allow the proposed auto body and painting shop at 701 A Street.

Background

Since 1993, Mr. and Mrs. Sarmiento have operated successfully an autobody repair and paint business. Due to escalating rents in San Mateo County, the Sarmientos recently were forced to relocate their autobody and paint shop from Redwood City to a more affordable location. In August 1999, the Sarmientos found the existing building at 701 A Street in Hayward (the "Property"). They believed that an auto body and paint shop was a permitted use of the existing building. Together, with Mr. Agustin Duran, the applicants relocated their auto repair and services business to the Property.

The City of Hayward General Plan, adopted May 6, 1986, as amended through February 4, 1998 ("General Plan") designates the Property *Retail and Office*

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Commercial. This designation includes regional and community shopping centers, concentrations of offices and professional services, and portions of the downtown area where mixed retail and office uses are encouraged. General Plan, p. X-3. The Property is located along the edge of the Downtown-City Center Area. It is so close to the edge that the properties across the street on the northern side of A Street are located outside of the Downtown-City Center Area. The Downtown-City Center Area includes major public facilities, retail and office areas, and high-density residential uses. Mixed-use development is encouraged to promote pedestrian orientation and to maintain the downtown area as an integrated living, working, shopping and recreational area. General Plan, p. X-4.

The City of Hayward Zoning Ordinance designates the Property within the Central City - Commercial (CC-C, Subdistrict. Zon. Ord. § 10-1.1520. The purpose of the CC-C Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Conditionally permitted uses within this subdistrict include automobile repair (minor and major). Minor auto repair includes minor automotive servicing and replacement of parts for passenger automobiles and/or motorcycles, usually in the same day. Services include, but are not limited to, engine tune-up, lubrication, and tire, muffler, brake and electrical. Major auto repair includes auto repair garages and specialty establishments for motorcycles, and passenger automobiles and trucks of all sizes, such as machine, tire, body and fender, auto glass, radiator, transmission, motor tune-up, vehicle upholstery, and muffler shops. Major auto repair may also include repair of machinery and equipment. The proposed auto body and painting shop is a conditionally permitted use within the CC-C Subdistrict.

The Use Permit Is Consistent With The General Plan Retail And Office Commercial Designation.

We understand that City staff is recommending denial of the Use Permit because staff believes that the proposed auto repair, auto body and painting shop is inconsistent with the General Plan Retail and Office Commercial designation. Contrary to the staff's assertions, the General Plan does not state that auto repair uses are not permitted within this land use category. Retail is defined as "to sell in small quantities" or "to sell directly to the ultimate consumer." Mr. and Mrs. Sarmiento's auto body and paint shop involves the provision of auto repair services in "small quantities" to its individual customers. This is not a wholesale business. This is not a dealership. This is a small business providing services to individual customers. Moreover, the existing zoning in the Downtown Area provides further clarification regarding the types of uses allowed under the Retail and Office Commercial designation. The CC-C zoning conditionally allows minor and major automobile repair and services.

¹ Webster's Third New Int'l. Dictionary, 1936 ed., p. 1938.

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In a 1999 California Appeals Court decision, the Second Appellate District upheld a county's approval of a use permit for expansion of existing mining operations even though a general plan purportedly did not allow the use. *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App. 4th 238. The Court considered the fact that a county ordinance permitted uses customarily incidental to mining, and concluded that it must construe zoning ordinances reasonably, considering the object to be attained and the general structure of the ordinance. See, e.g., *Markey v. Danville Warehouse & Lbr., Inc.*, (1953) 119 Cal.App.2d 1, 5. Based upon the fact the County ordinance allowed mining uses, the court upheld the use permit.

Although the General Plan is silent as to whether automobile services uses are considered retail uses, the underlying Zoning District applied to the Property is very clear that automobile repair uses and services are allowed within the Downtown. In fact, there are existing automobile repair uses within the CC-C Subdistrict and the Central City Residential (CC-R) Subdistrict within the Downtown and near the Property (e.g., Colomex Body 22431 Mission Blvd.; Hayward Collision: 22145 Mission Blvd., K T Auto Repair: 829 A Street). Approximately 25 auto repair and auto service businesses are located within .25 miles radius of the Property. More than 10 such business are located in the Historic Rehabilitation Area of the Downtown Hayward Redevelopment Project Area. The City's approval of a use permit in 1963 for a general automotive use on the Property, and issuance of building permits in the last couple of years for the existing building, support the conclusion that automobile related services historically have been considered an appropriate use for the Property under the General Plan. Therefore, the Use Permit is consistent with the General Plan and zoning.

The Proposed Uses Are Desirable For Public Convenience And Welfare.

The proposed auto body and painting shop are necessary services in most, if not all, communities. Given work and family schedules, it is not always convenient for customers to travel to outlying industrial areas to seek auto repair services. The Sarmientos and Mr. Duran selected the Property, in part, because of its proximity to BART in order to facilitate customer service and convenience for the public. Customers can drop off their cars in the morning, walk to BART to take BART into work and return by BART, to pick up their cars. Both the Sarmientos' and Mr. Duran's businesses would be conveniently located for access to BART and to the Downtown. Moreover, the proposed use is designed to encourage pedestrian activity in accordance with the General Plan policies promoting pedestrian use in the Downtown.

The Proposed Auto Repair Use Will Not Impair The Character And Integrity Of The Central City Zoning District And Surrounding Area.

The staff report verifies that the Property is surrounded by a mix of uses, including restaurants, high-density residential, minor auto repair, offices and service commercial, and a vacant lot next to the BART station. There is no known future use of

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the vacant lot. **Allowing** another auto **repair** and **service business** is compatible with the **existing** auto repair and **other commercial** uses in the **neighborhood**. This **use** was **allowed historically on the Property**. The auto repair use also is compatible with the adjacent paved vacant lot.

The proposed business would **contribute** to the commercial viability of the **neighborhood**. Customers and **employees** can **walk** to the businesses and services in the neighborhood and rely on BART for transportation. Consequently, there is no evidence supporting the staff's position that the proposed uses will **impair** the character and integrity of the existing **neighborhood** and surrounding area. If anything the proposed use would encourage the City's interest in **promoting pedestrian uses** along A Street.

The Proposed Auto Body And Painting Shop Will Not Be Detrimental To The Public-Health, Safety, Or General Welfare.

The proposed auto body and **painting shop** will not **result in traffic** and **parking conflicts**, and hazardous **materials and odors** that would be detrimental to the **public health, safety and welfare**. Based upon staff's review of the proposed plans, **staff** determined a total of 18 parking spaces would be required. Contrary to statements in the staff report, these spaces can be accommodated within the existing building. If staff is concerned about off-site parking, the Sarmientos and Mr. Duran are more than willing to agree to a condition requiring that the building accommodate all of the parking. Moreover, 18 new cars are not arriving each day. The Sarmientos estimate that approximately 2-3 new cars are dropped off at the Property a week. This is hardly enough to cause traffic impacts on "A" Street, a heavily traveled major arterial. The proposed use would not generate traffic and parking conflicts.

Auto body and painting shops are regulated by the Fire Department. The Sarmientos have been and will continue to comply with all applicable requirements. All uses of hazardous materials will be contained within the existing building. Therefore, the proposed use will not be detrimental to the public health, safety or general welfare.

The Proposed Auto Body And Painting Shop Is In Harmony With Applicable City Policies And The Central City Zoning District.

Several General Plan policies encourage commercial uses in the Downtown area. One policy provides for fostering the special character of areas within the downtown in order to create a coherent land use pattern. One General Plan strategy encourages both commercial and residential development in the area surrounding the BART Station. General Plan, p. V-11. General Plan economic policies encourage strengthening important commercial centers. General Plan, p. V-8.

Approval of the proposed Use Permit would allow a commercially viable use in the Downtown area. The proposed use is compatible with the surrounding land uses, and thus, would contribute to the existing land use pattern. There are no plans for the

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use of the vacant lot near the Property, consequently, future uses of the vacant lot may be compatible with auto repair uses on the Property. Empty vacant buildings, however, are not compatible with the General Plan policies strengthening commercial development in the Downtown. If the Use Permit is denied, in the near-term the existing building will remain vacant (adjacent to an existing vacant lot) and will neither contribute to economic development nor to the establishment of a pedestrian district envisioned along the "A" Street corridor.

Approval of the Use Permit Does Not Require An EIR

Contrary to the assertions raised in the staff report, the Use Permit does not require preparation of an environmental impact report ("EIR"). Staff has reviewed this application since April 3, 2000, and never once indicated that an EIR, nor any other environmental document (e.g., Mitigated Negative D&ration) was required in order to obtain approval of the Use Permit.

The proposed use of an existing 8,650 square foot facility does not trigger environmental review under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). Under CEQA, an existing facility involving the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination is exempt from the requirement to prepare an EIR. 14 Cal. Code Regs. § 15301. This exemption also allows for an addition to an existing facility up to 10,000 square feet, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible under the General Plan, and if the project is not located in an environmentally sensitive area. The proposed Use Permit involves the use of an existing building under 10,000 square feet. The Property is completely paved and covered with the existing building, and there is no evidence that it is located in an environmentally sensitive area. Moreover, new construction or conversion of small structures is exempt from environmental review under CEQA. 14 Cal. Code Regs. § 15303.

Staff's conclusion that an EIR is required due to an alleged inconsistency with the General Plan is unsupported by substantial evidence. 14 Cal. Code Regs. § 15064(a)(1). A discretionary action is subject to CEQA if it will result in a direct or reasonably foreseeable indirect physical change in the environment. If the City determines there is substantial evidence in the record that a project may have a significant effect on the environment, the City shall prepare an EIR. 14 Cal. Code Regs. §§ 15060(c), 15064(c), (f); *Friends of B Street v. City of Hayward* (1980) 106 Cal. App. 3d 988. Once a decision is made to prepare an EIR, the EIR generally should address a project's consistency with the General Plan as part of the environmental setting. 14 Cal. Code Regs. § 15125.

MORRISON & FOERSTER LLP**Mr. Caveglia, chair .****November 15, 2000****Page Six**

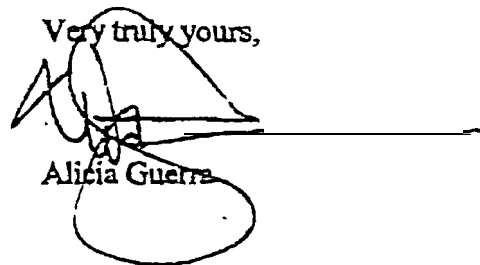
A project's purported inconsistency with the General Plan is not considered a significant environmental effect for purposes of triggering review under CEQA. 14 Cal. Code Regs. § 15125. Staff has not provided substantial evidence indicating that allowing the proposed auto body and painting shop to operate in an existing building would result in a significant environmental effect. For the reasons stated above, if the Planning Commission approves the Use Permit, substantial evidence supports a determination that the project is exempt from review under CEQA and would not trigger preparation of a Mitigated Negative Declaration or an EIR.

Conclusion

Mr. and Mrs. Sarmiento and Mr. Duran operate small businesses. They are victims of the Bay Area's escalating rents. These small business owners moved their businesses to Hayward in hopes of keeping their businesses alive. If the Use Permit is denied, Mr. and Mrs. Sarmiento and Mr. Duran will suffer substantial economic hardship and will be forced to close their businesses.

Mr. and Mrs. Sarmiento have attempted to address staff's concerns regarding the proposed auto body and painting shop. They are interested in operating their business in a manner that is consistent with the City's objectives for Downtown commercial activity. If the Use Permit is approved, the Sarmientos will continue to work with staff to assure that the proposed uses are operated professionally and in accordance with appropriate conditions of approval. We appreciate your consideration of our comments and encourage the Planning Commission to approve the Use Per&-

Very truly yours,


Alicia Guerra

cc: Angelina Reyes, City Clerk
Michael O'Toole, City Attorney
Richard Patenaude
Mr. and Mrs. Jun Sarmiento
James Caleshu, Esq.
Hope Nakamura, Esq.

MINUTES

REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD, Council
Chambers

Thursday, November 16, 2000, 7:30 P.M.
777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Caveglia, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Bogue, Halliday, Sacks, Williams, Zermeno
CHAIRPERSON Caveglia

Absent: COMMISSIONER None

Staff Members Present: Anderly, Conneely, Emura, Looney, Patenaude

General Public Present: Approximately 14

PUBLIC COMMENT

No comments made.

AGENDA

1. Use Permit Application No. 00-160-09 – 3 Diamond Autobody & Paint (Applicant), AECO Management (Owner): Request to Establish Minor and Major Auto Repair Services within an Existing 8,650-Square-Foot Commercial Building – The Property is Located at 701 A Street in a Central City-Commercial (CC-C) Zoning District
2. Historic Site Designation No. 13 – ConAgra (Owner): Request by the Planning Director for designation of the Hunt Foods Water Tower as an Historic Structure – the Property is Located at 199 C Street, and Approximately 1400 Feet South of the Intersection with Burbank Street, in an Industrial (I) Zoning District
3. Site Plan Review Application No. 00-130-06 – Warraich Construction (Applicant/Owner): Request to Construct a Commercial Retail Store and Three Residential Units on the Second Floor – the Property is Located at 27938 Baldwin Street in a Neighborhood Commercial (CN) Zoning District

PUBLIC HEARINGS

1. Use Permit Application No. 00-160-09 – 3 Diamond Autobody & Paint (Applicant), AECO Management (Owner): Request to Establish Minor and Major Auto Repair Services within an Existing 8,650-Square-Foot Commercial Building – The Property is Located at 701 A Street in a Central City-Commercial (CC-C) Zoning District

Acting Principal Planner Patenaude presented the staff report. He noted that the building had been vacant for more than six months, thus voiding the previous use permit. Staff recommended denial of the application since the downtown core is governed by General Plan policies requiring that uses be compatible to each other and promote a pedestrian and transit orientation. The other automobile uses in the area have been in place for many years, most from before 1960. He explained that the perimeter to the downtown is important because it anticipates the arrival into the downtown area. Staff feels that another auto use in this area would help to fragment the boundary to the downtown core. Other commercial uses are viable for this location. In response to Commissioners' questions, he said that the previous use permit did not allow painting of autos. He noted that the retrofitting of the building did not imply future use. This application would be a brand new Use Permit, beyond the scope of the original.

The Public Hearing was opened at 7:45 p.m.

James Caleshu, 332 Pine Street, San Francisco, representing Attorneys for Entrepreneurs, said they represent small businesses who are trying to keep a foothold in the Bay Area. The Sarmiento's believed they could move their business into this facility. It is a great location relative to the BART station. He asked whether the human element should not be given some consideration rather than the City only trying to bring in big franchises in the area.

Alicia Guerra, Morrison & Forrester, Walnut Creek, land use attorneys for the applicant, asked for consideration of three items in particular. One, that there are other auto repair businesses in the area; two, that this business is compatible with the surrounding area; and three, that, because it is in an enclosed building, there will be few environmental or health issues with regard to the general public.

Douglas Day, AECO Management, Oakland, owners of the building, said Automotive Engineering occupied the building for 31 years and did a great deal of heavy automotive work during that time. When the owners were required to retrofit the building, they did so at their own expense and rebuilt it for auto uses. He maintained that at no time did the City tell them they should do something to the building other than for heavy auto use, so they rebuilt it to do heavy engine rebuilding and replacement work. He noted that if they can't rent the building as an auto building, it won't be rented.

Commissioner Halliday asked whether restoring the original permit would be acceptable to the applicant. She was told it would not be since this business is an auto body shop, which needs to include painting.

She then asked about the parking situation since there is such limited parking outside the building.

Ms. Guerra responded that their workload was usually limited to those parking spaces inside the building. They would agree to a condition for on-site parking.

Commissioner Zermeno asked whether they had looked elsewhere in the City for a location. He was told that, yes, they looked everywhere. They were desperate to find a place.

MINUTES



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Peter Aloo, 22206 Prospect, a former inspector with Santa Clara County and now a teacher in the City of Fremont, said he, too, had been living in Palo Alto when his home was destroyed. He could not afford to rebuild it. He met the Sarmiento's as a customer. They are hard-working American immigrants. He suggested he would do anything he could to help them retain the right to stay where they are, adding these people want to meet their dream.

Hope Nakamura, 521 E. 5th, San Mateo, staff attorney with Legal Aid in Palo Alto, said Mr. Durand came to see them on behalf of the Sarmiento's. Mr. Durand had invested more than \$10,000 in this venture so he has an interest in having the Sarmiento's continue their shop. She added that, with the rising costs in that area, many small businesses are being driven out.

Shirley Sarmiento, 701 A Street, applicant, said they thought this was a commercial zone. They applied for a business license and were told to go to the Planning Department. They were in Redwood City for five years when their lease expired. The new owner doubled their rent. They felt lucky to have found this place.

The Public Hearing was closed at 8:21 p.m.

Commissioner Williams asked about the location itself, saying it was built for auto repair. He asked about the nature of painting cars and has it changed enough to make it viable in this building.

Acting Principal Planner Patenaude responded that, although the nature of it has changed, they would be required to do other things to bring it to an industry standard. He added that staff was not concerned with the operation of the painting booth specifically, but of the use itself, since this would bring in a major auto repair service into the downtown.

Chairperson Caveglia reported that anyone who has been near the Earl Shibe shop on Mission, knows the paint fumes can be overwhelming. He added that the City would love to have small businesses in the area.

Commissioner Sacks asked, at what point does the City have responsibility during a retrofit, so that someone is not led into an unrealistic expectation. If the prior use was not okay there, why was it permitted, and how can we now say, you can no longer do that. If the permits to retrofit were for that purpose, why is this now under consideration.

Acting Principal Planner Patenaude responded that the retrofit took a longer time than anticipated. After vacating the building for six-months the use permit expired and a new one was required.

Chairperson Caveglia commented that even losing the former use permit, it never allowed

welding and painting.

Commissioner Williams added that this is not an allowable use. He asked how Auto Engineering operated so long outside the permit.

Acting Principal Planner Patenaude responded that given the structure of the building, the City may not have had any reason to suspect the nature of the business. However, even with a change of ownership, the original use permit would have been in effect.

Commissioner Williams said he understood what the applicant was experiencing. He would lean toward the applicant since they could not be **doing** that much business with their limited parking. It would be fair to agree to the application.

Commissioner Bogue said the real issue is the conditional use permit. Additional uses were never allowed so one can not argue for them. He moved, seconded by Commissioner Sacks, to deny the application subject to the findings in the staff report.

Commissioner Sacks expressed further concern over the response from the public in regard to the traffic and parking for the business. She noted that she was aware of the problem from personal experience.

Commissioner Halliday asked what other uses the building might have.

Acting Principal Planner Patenaude responded that it could be used in a variety of ways. Many other gas stations and auto tire shops have been transformed into retail uses which would be compatible with the downtown area.

Commissioner Halliday said she would reluctantly support the motion, although she might have supported reinstatement of the original permit. She expressed concern that there was so little communication between the owner and the City during the retrofit process. She said the proximity to BART is appropriate but that the original permit uses never allowed much of the heavy auto business they were doing.

Commissioner Williams said he would not support the motion because of too many factors. The building is built to serve autos. It is close to BART, which is positive aspect. He wants to encourage small businesses in the area, and if they move out, where else will they go. He added that the use permit was granted and the City did not know what was going on in the building at that time.

Commissioner Zermeño said he would support the motion since this is not the right location for this business.

The motion passed **5:1**, with Commissioner Williams voting, "No."

Chairperson Caveglia reminded the petitioner that they have 10-days in which to appeal the decision,



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 11/16/00

Agenda Item 1

TO: Planning Commission

FROM: Richard E. Patenaude, Acting Principal Planner

SUBJECT: Use Permit Application NO. 00-160-09 – Jun & Shirley **Sarmiento** for 3 Diamond **Autobody & Paint** (Applicant), Douglas Day for **AECO Management (Owner)**: Request to Establish Minor and Major Auto Repair Services within an Existing 8,650-Square-Foot Commercial Building - *The Property Is Located at 701 "A" Street in a CC-C (Central City – Commercial) District*

RECOMMENDATION

Staff recommends that the Planning Commission deny the conditional use permit for auto repair services subject to the attached findings.

DISCUSSION

The applicant proposes to operate an auto repair facility, featuring both minor and major services, within an existing building. The minor auto repair services include engine tune-up, repair and overhaul and computer diagnostics. The major repair services would include collision repair and painting. Auto repair facilities require approval of a Conditional Use Permit in *the Central City – Commercial District*.

Background

A Conditional Use Permit was issued in 1963 to construct this building for use as a general automotive garage, including retail and wholesale sales of auto parts and engines. Excluded were bodywork and painting, lubrication and wheel alignment.

Operations within the building ceased as of September 1997 and the building was vacant for approximately two years. During at least part of that time, the building was undergoing seismic retrofitting. When a business requiring a Conditional Use Permit has ceased operation

for a period in excess of 6 consecutive months, the use permit becomes null and void. Even so, the previous use permit did not allow bodywork, painting, lubrication or wheel alignment.

The applicant began operating an auto repair facility in June 1999, without an approved Use Permit, at which time a paint spray booth was installed. Staff ordered the removal of the booth and a cessation of welding operations. The applicant has continued the auto repair services in the meantime.

Site

The building occupies the entire property, with approximately 59 feet of frontage on "A" Street and 150 feet of frontage on Montgomery Street. Vehicles enter the building by a driveway on each street; pedestrian access is at the street corner. The property is located within the Downtown Hayward Redevelopment Plan Area.

The surrounding land uses, zone districts and general plan land use designations are as follows:

	Existing Use(s)	Zone District(s)	Gen'l Plan Land Use Designations
North	Restaurant/Retirement Center	c c - c	ROC
South	Multi-Family Residential / Offices	CC-C SD1	ROC
East	Various Commercial / Offices	c c - c	ROC
West	Vacant (BART-owned)	c c - c	ROC

cc-c = Central City - Commercial District; SD1 = "B" Street Special Design Streetcar District; ROC = Retail & Office Commercial

General Plan Issues

The General Plan Map designation for the properties along "A" Street is *Retail & Office Commercial*. The property is also located in the Downtown, which stands apart from other areas of the City "because it has the widest mixture of land uses and because it is the symbolic center for the City: . . . Mixed-use development is to be preferred wherever feasible because retail use at ground levels with office or residential above would put complementary uses within walking distance creating an intensely used, interesting, pedestrian district." The property is also located less than 700 feet from the Hayward BART Station, placing it within this pedestrian district.

The area around the proposed auto repair facility contains a mixture of uses including restaurants, high-density residential (including senior housing), minor auto repair, offices and service commercial. The future use of the vacant property to the west, owned by BART, is unknown; however, it may be anticipated that it will be developed with a mixture of transit-oriented uses as is being done currently within Hayward's Downtown Core and within other communities with BART stations.

¹ General Policies Plan, Economic Development Element

Staff believes that auto repair services do not conform to the General Plan designation. The proposed uses are typically located in *the Industrial or General Commercial* areas of the City. The General Policies Plan envisions that existing auto repair establishments near the Hayward BART station will be relocated to those areas. The repair services add an intensity of use that is not desirable in the downtown core and will disrupt the pedestrian character and the mix of uses of the downtown. Major auto repair services typically require longer repair times and storage of the vehicles, and introduce hazardous materials and odors.

The subject site contains no on-site parking except for that which can be accommodated within the building. Although the proposed site plan indicates that 18 cars can be parked inside the building, it is more likely that only 9 cars could be parked in an orderly fashion given the location of the equipment and the lane needed for vehicle movement through the building. The combination of minor and major repair services will require cars to be parked on the adjacent streets or on an off-site location. Off-site parking will further impact the desired development of the downtown. The current operation already requires that cars be densely packed into the building.

The *Core Area Plan* calls for paying attention to the “boundaries and gateways along the perimeter of the core to give identity and clarity to the area.” “To create physical definition for the downtown core, density and activity must continue all the way to its perimeter. A strong boundary will help define the identity of the core as a distinct area, and gateways along this boundary identify the revitalized center for the thousands of people who travel on the surrounding arterials daily.” The infusion of new auto repair uses along “A” Street will accentuate the existing automobile-oriented perimeter. The proposed use will contribute to the fragmentation of the perimeter of the downtown core and will be harmful to the downtown.

ENVIRONMENTAL REVIEW

Projects that are denied do not require CEQA review. Should the Planning Commission wish to consider approval of all or part of the proposed project, staff will have to prepare an initial study to determine whether a Negative Declaration or an Environmental Impact Report (EIR) will be required. At this time, staff believes that an EIR may be required because there is no way to mitigate the inconsistency of the use with the General Policies Plan.

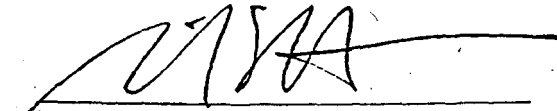
PUBLIC HEARING NOTICE

On November 6, 2000, a Notice of Public Hearing was mailed to every property owner and resident within 300 feet of the property as noted on the latest assessor’s records.


CONCLUSION

The General Policies Plan envisions that auto repair facilities will be relocated out of the downtown as possible. ..Auto repair services are not **compatible** with the mix of uses desired in the downtown area, especially the transit-oriented uses that are desired in the vicinity of the BART station. Higher-density commercial and residential development that is clustered within walking distance of transit centers has the potential to increase the use of transit, provide mobility for non-drivers, and reduce **traffic congestion**. There **are** a variety of uses, provided for in the Zoning Ordinance regulations for the CC-C District, which could be appropriate in the existing building. Therefore, staff recommends that the Planning Commission deny the Use Permit for the proposed auto repair services.

Prepared by:


Richard E. Patenaude, AICP
Acting Principal Planner

Recommended by: .


Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area/Zoning Map
- B. Findings for Denial
Plans

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO.

Introduced by Council Member _____

*True
12/29/00*

RESOLUTION DENYING APPEAL OF PLANNING
COMMISSION'S DECISION TO DENY USE PERMIT
APPLICATION NO. 00-160-09 – SHIRLEY SARMIENTO
FOR 3 DIAMOND **AUTOBODY** AND PAINT (APPLICANT
AND APPELLANT); DOUGLAS DAY FOR AECO
MANAGEMENT (OWNER))

WHEREAS, Use Permit Application No. 00-160-09 involves a request to establish minor auto repair services (including engine tune-up, repair and overhaul and computer diagnostics) and major auto repair services (including collision repair and painting) within an existing 8,650 square foot commercial building located at 701 “A” Street at the southeast corner with Montgomery Street in a CC-C (Central City - Commercial) District; and

WHEREAS, auto repair facilities require approval of a Conditional Use Permit in the Central City - Commercial (CC-C) District; and

WHEREAS, a prior Conditional Use Permit, issued in 1963 for this location, lapsed as a result of an approximate two-year vacancy in the building, from September, 1997, to June, 1999, during less than five months of which time the building was undergoing voluntary seismic retrofitting; and

WHEREAS, on November 16, 2000, the Planning Commission held a public hearing on Use Permit Application No. 00-160-09 and denied the Conditional Use Permit, pursuant to the adopted findings, after determining that the auto service use is not appropriate at this location and expressing concern that this request is an expansion of the original use permit; and

WHEREAS, projects that are denied do not require environmental review under the California Environmental Quality Act (“CEQA”); and

WHEREAS, on November 20, 2000, the Applicant, Shirley Sarmiento for 3 Diamond **Autobody** and Paint, by and through her attorneys, sent a letter appealing the Planning Commission's decision to deny Use Permit No. 00-160-09 and requesting reinstatement of the prior use permit; and

WHEREAS, the City Council has reviewed and considered all materials presented, including the record of the proceedings before the Planning Commission on November 16, 2000 (which is on file in the **office** of the City Clerk); and

WHEREAS, the City Council hereby **finds** and determines that:

1. The proposed auto repair services are not desirable for the public convenience or welfare in that they are detrimental to the desired pedestrian- and transit-oriented uses envisioned for the downtown area, and in that there are suitable locations for the proposed use in the General Commercial and Industrial Districts of the City.
2. The proposed auto repair service will impair the character and integrity of the Central City Commercial (CC-C) District as it is not a desirable service amid the existing and proposed mix of pedestrian- and transit-oriented uses desired for the downtown area and which otherwise may be located in the subject structure.
3. The proposed auto repair service will be detrimental to the public health, safety, or general welfare in that the proposed use introduces traffic and parking conflicts, and hazardous materials and odors, that are detrimental to the existing and proposed mix of pedestrian- and transit-oriented used desired for the downtown area.
4. The proposed auto repair service will not be in harmony with the applicable City policies as the General Policies Plan envisions that auto repair services will be relocated out of the downtown area and that the Core Area Plan envisions "A" Street to be the boundary of a pedestrian district, which this type of use is likely to disrupt.
5. Because the project is being denied, no CEQA review is required.

NOW THEREFORE BE IT RESOLVED, upon the basis of the aforementioned findings, the City Council hereby denies the appeal and upholds the Planning Commission action subject to the foregoing findings.

IN COUNCIL, HAYWARD, CALIFORNIA _____ , 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward